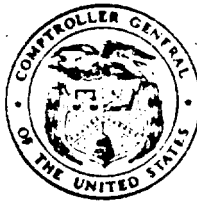


# DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

26921

FILE: B-213733

DATE: December 1, 1983

MATTER OF: Lab-Line Instruments, Inc.

## DIGEST:

The manufacturer of the product offered by the third low bidder is not an "interested" party under GAO Bid Protest Procedures because the firm is not a bidder and therefore not eligible for award, even if the issues raised were resolved in its favor.

Lab-Line Instruments, Inc., the manufacturer of the product offered by Daigger Scientific, the third low bidder, protests the proposed award of a contract under solicitation No. F33659-83-B-0065, issued by the Department of the Air Force as a small business set-aside. Lab-Line complains that the low bidder is a large business and that the second low bidder has improperly used Lab-Line's product specifications in its offer and thus is conducting business in a "non-professional" way. We dismiss the protest.

Under our Bid Protest Procedures, a party must be "interested" before we will consider its protest. 4 C.F.R. § 21.1(a) (1983). Whether a party is sufficiently interested depends upon the degree to which its interest in the outcome is both established and direct. Generally, we do not consider a party's interest to be sufficient where that party is not eligible for award, even if the issues raised were resolved in its favor. Radix II, Incorporated, B-208557.2, September 30, 1982, 82-2 CPD 302.

Here, Lab-Line is not a bidder under the solicitation and therefore is not eligible for award. Since Daigger Scientific, the actual bidder, has a more direct interest in the outcome of the protest, id., Lab-Line is not an interested party.

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We would not consider this protest in any event since the issues raised cannot be resolved by this Office. The size status of the low bidder can only be considered by the Small Business Administration under that agency's statutory authority. 15 U.S.C. § 637(b)(6) (1982). Also, Lab-Line's challenge to the second bidder's business conduct at best would concern the latter firm's responsibility. In this connection, this Office does not review a contracting officer's finding that a firm is a responsible prospective contractor unless there has been a prima facie showing that the affirmative determination of responsibility was made fraudulently or in bad faith or that definitive responsibility criteria in the solicitation were not met. These exceptions are not applicable here. Amendments to GAO Bid Protest Procedures, 48 Fed. Reg. 1931 (1983) (to be codified at 4 C.F.R. § 21.3(g)(4)).

The protest is dismissed.

*Harry R. Van Cleve*  
Harry R. Van Cleve  
Acting General Counsel